



VIA ECFS

September 8, 2008

Ms. Dana Shaffer
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* filing in WC Docket Nos. 07-21, 05-342

Dear Ms. Shaffer:

AT&T has filed in the above-captioned dockets a compliance plan that it asserts satisfies the Commission's pre-conditions to grant of its petition seeking forbearance from certain Commission assignment rules.¹ Among other things, AT&T's compliance plan must include a certification that AT&T will comply with section 254(k) of the Communications Act (the Act) and that AT&T will provide cost accounting information necessary to prove such compliance.²

Within the last few days AdHoc has come to realize that the section 254(k) certification that is part of AT&T's compliance plan is *prima facie* inaccurate. To understand why AT&T's certification is *prima facie* inaccurate, the Commission must consider the record that has very recently developed regarding inter-carrier compensation reform.

AT&T has asked the Commission to implement comprehensive inter-carrier compensation reform, or in the alternative, grant an AT&T petition for declaratory ruling and waiver with respect to VoIP compensation.³ AT&T's proposed comprehensive inter-carrier compensation reform that would have the Commission approve / prescribe a unified terminating access rate of \$0.0007 per minute.⁴ AT&T's proposal addresses

¹ See, *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160 from Enforcement of Certain of the Commission's Cost Assignment Rules*, *Petition of BellSouth Telecommunications, Inc. for Forbearance Under 47 U.S.C. § 160 from Enforcement of Certain of the Commission's Cost Assignment Rules*, Memorandum Opinion and Order, WC Docket Nos. 07-21, 05-342, ¶ 31, (*AT&T Cost Assignment Order*).

² *Id.* Section 254(k) of the Communications Act prohibits telecommunications carriers from using non-competitive services to cross-subsidize competitive services.

³ July 17, 2008 letter from Henry Hultquist, Vice President Federal Regulatory, AT&T Services, Inc. to Marlene H. Dortch filed in CC Docket No. 01-92, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 99-68, WC Docket No. 07-135 and WC Docket No. 04-36. The Commission opened WC Docket No. 08-152 to consider AT&T's petition for declaratory ruling and waiver.

⁴ See, August 6th 2008 letter submitted in WC Docket No. 04-36 and CC Docket No. 01-92 by at&t, CTIA, Global Crossing, CompTIA, Information Technology Industry Council, National Association of



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arbitrage problems and stabilizing revenue streams, but nowhere in its proposal does it state that the proposed unified terminating access rate of \$0.0007 per minute is cost-based. If that rate does not recover the cost of providing terminating access, then AT&T's section 254(k) certification would not be true.

As noted above, section 254(k) of the Communications Act prohibits telecommunications carriers from using non-competitive services to cross-subsidize competitive services. The Commission has found that switched access service and subscriber line service to be noncompetitive offerings.⁵ AT&T, of course, provides those services. AT&T also provides competitive long distance service, VoIP service and wireless service, all of which would pay terminating access under AT&T's proposal. If the proposed unified terminating access rate of \$0.0007 per minute is less than the cost of providing terminating access service, AT&T will use non-competitive originating access, Subscriber Line service, and special access service (which AdHoc has shown to be a non-competitive service in many instances) to cross-subsidize its competitive offerings through below-cost terminating access service.⁶

Pac-West has shown that numerous state public utility authorities, using a Commission-established cost methodology, have adopted TELRIC call termination rates, "[w]hich are almost uniformly well in excess of the \$0.0007 cap being proposed by the ILEC/CMRS [including AT&T] coalition."⁷ Pac-West has displayed state PUC approved terminating rates that range from as low as \$0.00152 to as high as \$0.0101419 per minute. Thus, it appears that the proposed terminating access rate of \$0.0007 is not cost-based.

Given the foregoing, it appears that AT&T's compliance plan did not prevent AT&T from urging the Commission to adopt a below cost terminating access rate and that AT&T's section 254(k) certification is at least *prima facie* inaccurate and its compliance plan inadequate to satisfy the requirements set out in the *AT&T Cost*

Manufacturers, New Global Telecom, PointOne, Sprint, TIA, T-Mobile, Verizon, the Voice On the Net Coalition (VON Coalition)

⁵ See *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982, 16135-36 (1997), *aff'd sub. nom. Southwestern Bell v. FCC*, 153 F.3d 523 (8th Cir. 1998) (terminating access market is not effectively competitive); *Access Charge Reform*, CC Docket No. 96-262, Seventh Report and Order, 16 FCC Rcd 9923 (2001); *Access Charge Reform*, CC Docket No. 96-262, Eighth Report and Order, 19 FCC Rcd 9108 (2004) (originating access market is not effectively competitive). The Commission never has found subscriber line service to be a competitive offering, and accordingly still applies Title II regulation to interstate subscriber line service.

⁶ If the unified terminating access rate of \$0.0007 per minute is cost-based, then there is no need to recover the revenues lost if terminating access rates drop from the current average rate. Put differently, if \$0.0007 is cost-based, then current access rates almost certainly are producing massive cross-subsidies of competitive services in violation of section 254(k) of the Communications Act. Industry deals cannot supersede the requirements of section 254(k).

⁷ Pac-West, Comments in WC Docket No. 08-152, Declaration of Lee L. Selwyn, at 35 – 36, August 21, 2008



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Assignment Order. Accordingly, the Bureau cannot reasonably approve AT&T's compliance plan.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'James S. Blaszk', written in a cursive style.

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